

No. 4351

1417

United States

1411

Circuit Court of Appeals

For the Ninth Circuit.

EDWARD JOSEPH HAGEN,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.


Transcript of Record.

Upon Writ of Error to the United States District
Court of the Western District of Wash-
ington, Northern Division.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

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Seattle, Washington,
Attorney for Defendant in Error.

C. T. McKINNEY, Esq., 310 Federal Building,
Seattle, Washington,
Attorney for Defendant in Error. [1*]

United States District Court, Western District of
Washington, Northern Division.

November, 1922 Term.

No. 7469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. J. HAGEN, ED. W. PIELOW, CHARLES
GIVENS, and CHRIS BROWN,

Defendants.

INDICTMENT.

Conspiracy to Violate—Vio. Sec. 37 Penal Code,
Act of Oct. 28, 1919, National Prohibition Act.

United States of America,
Western District of Washington,
Northern Division,—ss.

The grand jurors of the United States of America,

*Page-number appearing at foot of page of original certified Transcript of Record.

being duly selected, impaneled, sworn and charged to inquire within and for the Northern Division of the Western District of Washington, upon their oaths present:

COUNT I.

That Ed. J. Hagen, Ed. W. Pielow, Charles Givens and Chris Brown, and each of them, on the fifteenth day of December, in the Year of our Lord One Thousand Nine Hundred and Twenty-two at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, willfully, unlawfully and feloniously combine, conspire, confederate and agree together, and one with the other, and together with divers other persons to the grand jurors unknown, to commit certain offenses against the United States, that is to say, to violate the provisions of the Act of Congress passed October 28, 1919, and known as the National Prohibition Act, it being then and there the plan, purpose and object of said conspiracy [2] and the object of said persons so conspiring together as aforesaid and hereinafter referred to as the conspirators to knowingly, willfully and unlawfully possess, transport and sell certain intoxicating liquors, to wit, whiskey, gin and divers other liquors containing more than one-half of one per centum of alcohol by volume and fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the grand jurors unknown, such possession and transportation being intended

by them, the said conspirators, for the purpose of violating the National Prohibition Act by selling, bartering, exchanging, giving away, furnishing and otherwise disposing of said intoxicating liquors in violation of the National Prohibition Act, such possession, transportation and sale of said intoxicating liquors by them, the said conspirators as aforesaid being unlawful and prohibited by the said Act of Congress.

That the conspiracy was and is a continuing conspiracy continuing from, to wit, the fifteenth day of December, 1922, to the time of the presentment of this indictment.

OVERT ACTS.

1. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators, Ed. J. Hagen, Ed W. Pielow, Charles Givens, and Chris Brown, did from the fifteenth day of December, 1922, to the time of the presentment of this indictment, rent, maintain and control in Seattle, Washington, a dwelling-house located at 620 Broadway, Seattle, Washington, in said division and district. [3]

2. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirator Ed. J. Hagen, on the nineteenth day of February, 1923, at Seattle, in said division and district, then and there being,

did then and there knowingly, willfully and unlawfully sell certain intoxicating liquors, to wit, twelve (12) bottles each containing one-fifth of a gallon of a certain liquor known as whiskey, and twelve (12) bottles each containing one-fifth of a gallon of a certain liquor known as gin, all of said liquors then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the grand jurors unknown, which said sale of said intoxicating liquors by the said Ed. J. Hagen as aforesaid was then and there unlawful and prohibited by the National Prohibition Act.

3. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirator, Charles Givens, on the nineteenth day of February, 1923, at Seattle, in said division and district, then and there being, did then and there knowingly, willfully and unlawfully cause to be transported and delivered for sale certain intoxicating liquors, then and there containing more than one-half of one per centum of alcohol by volume and fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the grand jurors unknown, said transportation and delivery for sale being then and there unlawful and prohibited by the National Prohibition Act. [4]

4. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators, Ed. J. Hagen, and Ed. W. Pielow, and each of them, between the fifteenth day of December, 1923, and the twentieth day of February, 1923, at Seattle, Washington, in said division and district, then and there being, did make and enter in writing accounts showing the daily receipts and expenditures of money by the said conspirators, namely, Ed J. Hagen, Ed W. Pielow, Charles Givens and Chris Brown.

5. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that after the formation of said conspiracy and in pursuance thereof, and in order to effect the object of said conspiracy, the said conspirators Ed. J. Hagen, Ed. W. Pielow, Charles Givens and Chris Brown, on the twentieth day of February, 1923, at Seattle, Washington, in said division and district then and there being, and each of them, did then and there knowingly, willfully and unlawfully have and possess certain intoxicating liquors to wit, four (4) bottles then and there containing one-fifth of one gallon each of a certain intoxicating liquor known as whiskey, eight (8) bottles then and there containing each one (1) pint of a certain intoxicating liquor known as beer, all of said intoxicating liquor then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more

particular description of the amount and kind whereof being to the grand jurors unknown, such possession being intended by them, the said conspirators, for the purpose of violating the National Prohibition Act, by selling, bartering, [5] exchanging, giving away, furnishing and otherwise disposing of said intoxicating liquors in violation of the National Prohibition Act, such possession as aforesaid of said intoxicating liquors by them, the said conspirators, as aforesaid, being unlawful and prohibited by the said Act of Congress; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THOS. P. REVELLE.

THOS. P. REVELLE,

United States Attorney.

De WOLFE EMORY,

Special Assistant United States Attorney.

[Endorsed]: Presented to the Court by the Foreman of the Grand Jury in open court, in the presence of the Grand Jury, and filed in the U. S. District Court. March 8, 1923. F. M. Harshberger, Clerk. [6]

In the United States District Court, for the Western District of Washington, Northern Division.

No. 7469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. J. HAGEN, ED. W. PIELOW, CHARLES
GIVENS, and CHRIS BROWN,

Defendants.

MOTION TO QUASH INDICTMENT.

Come now the defendants herein, by George F. Vanderveer, their attorney, joining in this motion solely for reasons of convenience, and severally move the Court on the files and records herein, and on the attached affidavit of George F. Vanderveer, for an order quashing the indictment herein, upon the ground and for the reason that the United States District Attorney and his assistants submitted to the Grand Jury which returned said indictment a large number of letters, books, papers, memoranda, cards and accounts and a number of bottles of intoxicating liquors unlawfully seized in the possession of the defendants Ed W. Pielow, Charles Givens and Chris Brown at their dwelling at No. 122 Broadway, Seattle, Washington, upon a void search-warrant, directing a search of the premises of the defendant Ed Hagen; that said seizure was made for the purpose of forcibly procuring evidence from said defendants to be used against them on a prosecution for a felony; that the evidence so

obtained and submitted to the Grand Jury as aforesaid became the very basis for the indictment herein, without which the United States District Attorney cannot successfully prosecute the same; that all said matters have been done in violation of the defendants' rights under the Fourth and Fifth Amendments to the Constitution of the United States, and that the Government ought not to be subjected to further [7] discredit and expense, nor the defendants subjected to further expense, vexation and contumely by the prosecution of a bill of indictment so found and returned.

G. F. VANDERVEER,
Attorney for Defendants. [8]

EXHIBIT "A."

Local Form No. 103,
United States of America,
Western District of Washington,
Northern Division,—ss.

SEARCH-WARRANT.

The President of the United States to the Marshal of the United States for the Western District of Washington, and his deputies, or either of them, and to any National Prohibition Officer or Agent, or the Federal Prohibition Director, of the States of Washington, or any Federal Prohibition Agent of this state, and to the United States Commissioner of Internal Revenue, his assistants, deputies, agents, or inspectors, GREETINGS:

WHEREAS, Gordon B. O'Harra, a Federal Pro-

hibition Agent of the State of Washington, has this day made application for a Search-Warrant and made oath in writing, supported by affidavits, before the undersigned, a Commissioner of the United States for the Western District of Washington, charging that a crime is being committed against the United States in violation of the National Prohibition Act of Congress by one ED. HAGEN, who was, has been and is at said time and place possessing, and selling intoxicating liquor, all for beverage purposes, on certain premises in the City of Seattle, County of King, State of Washington, and in said District, more fully described as

122 Broadway, Seattle, Wash.,

and on the premises used, operated and occupied in connection therewith, all said premises being occupied by ED. HAGEN AND EMPLOYEES,

AND WHEREAS, the Undersigned is satisfied of the existence of the grounds of the said application, and that there is probable cause to believe their existence,

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, and authorized and empowered in the name of the PRESIDENT OF THE UNITED STATES to enter said premises with such proper assistance as may be necessary, in the daytime, or night-time, and then and there diligently investigate and search the same and into and concerning said crime, and to search the person of said ED. HAGEN AND EMPLOYEES, and from him or her, or from said premises seize any or all of the said

property so used in or about the commission of said crime, and then and there take the same into your possession, and true report make of your said acts as provided by law.

GIVEN under my hand and seal this 20 day of February, 1923.

[Seal]

A. C. BOWMAN,
United States Commissioner, Western District of
Wash.

RETURN OF SEARCH-WARRANT.

Returned, this 21 day of Feb., A. D., 1923.

Served, by making search as within directed, upon which search I found 3- $\frac{1}{5}$ gal. bottles of gin; $\frac{1}{2}$ pint Pebbleford whiskey; $\frac{1}{5}$ gal. bottle Scotch whiskey; 8 bottles Canadian beer; 14 bottles home brew beer; various letters, books, papers, memoranda, cards, accounts dealing with liquor traffic in immediate possession of various defendants, and duly inventoried the same as above, according to law.

(Signed) GORDON B. O'HARRA.

(Signature)

I, Gordon B. O'Harra, the officer by whom this warrant was executed do swear that the above inventory contains a true and detailed account of the property taken by me on the warrant.

(Signed) GORDON B. O'HARRA.

(Signature)

Subscribed and sworn to before me this 23d day of February, 1923.

A. C. BOWMAN,
United States Commissioner.

Western District of Washington,
United States of America,
Western District of Washington,—ss.

I certify the foregoing to be a true copy of the original search-warrant (and endorsements), issued by me on the date named therein.

(Signed) A. C. BOWMAN,
U. S. Commissioner.

Seattle, Wn., Feb. 28, 1923. [9]

EXHIBIT "B."

Local Form 100.
United States of America,
Western District of Washington,
Northern Division,—ss.

APPLICATION AND AFFIDAVIT FOR
SEARCH-WARRANT.

Gordon B. O'Harra being first duly sworn on his oath deposes and says: That he is a Federal Prohibition Agent duly appointed and authorized to act as such within the said District; that a crime against the Government of the United States in violation of the National Prohibition Act of Congress has been and is being committed in this, that in the City of Seattle, County of King, State of Washington, and within the said District and Division above named, one

ED. HAGEN AND EMPLOYEES
on the 20th day of February, 1923, and thereafter was, has been and is possessing and selling intoxi-

cating liquor, all for beverage purposes, on premises described as

122 Broadway, Seattle, Wash.,
and on the premises used, operated and occupied in connection therewith, all being in the County of King, State of Washington, and in said District, and all of said premises being occupied or under the control of ED HAGEN AND EMPLOYEES, All in violation of the Statute in such cases made and provided and against the peace and dignity of the United States of America.

WHEREFORE, this said affiant hereby asks that a Search-Warrant be issued directed to the United States Marshal for the said District, and his deputies, and to any National Prohibition Officer or Agent or deputy in the State of Washington, and to the United States Commissioner of Internal Revenue, his assistants, deputies, agents or inspectors, directing and authorizing a search of the person of the said Ed. Hagen and employees, and the premises above described, and seizure of any and all of the above described property and intoxicating liquor and means of committing the crime aforesaid, all as provided by law and said act.

(Signed) GORDON B. O'HARRA.

Subscribed and sworn to before me this 20th day of February, 1923.

[Seal] (Signed) A. C. BOWMAN,
United States Commissioner, Western District of
Wash.

United States of America,
Western District of Washington,—ss.

I certify the above to be a true copy of the original application and affidavit for search-warrant in said matter.

March 3, 1923.

[Seal] (Signed) A. C. BOWMAN,
U. S. Commissioner.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 14, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [10]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7469.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED. J. HAGEN, ED. W. PIELOW, CHARLES
GIVENS and CHRIS BROWN,
Defendants.

ORDER DENYING MOTION TO QUASH IN-
DICTMENT.

The several motions of the defendants herein to quash the indictment herein having coming duly

on for hearing before the Honorable Jeremiah Neterer, District Judge, the plaintiff appearing by Mr. DeWolfe Emory, Assistant United States Attorney, the defendants appearing by Mr. G. F. Vanderveer, their attorney, the Court having heard all arguments of counsel and duly considered the brief submitted in support of and in opposition to said motions, now, on motion of the plaintiff,—

IT IS ORDERED that said motions to quash be and the same hereby are denied.

To the denial of said motions to quash each of said defendants hereby severally takes exception and his exception is hereby allowed.

Done in open court this 1st day of May, 1923.

JEREMIAH NETERER,

District Judge.

Copy received this 1st day of May, 1923.

DeW. EMORY,

Asst. U. S. Atty.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 1, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [11]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. J. HAGEN, ED. W. PIELOW, CHARLES
GIVENS and CHRIS BROWN,

Defendants.

PETITION FOR RETURN OF PROPERTY.

To the Honorable JEREMIAH NETERER, District
Judge:

Your petitioner, Ed. W. Pielow, respectfully represents that he is one of the defendants in the above-entitled cause; that at all the times hereinafter mentioned he resided at 122 Broadway, Seattle, Washington; that said premises are and were a private dwelling and at all the times herein mentioned were occupied exclusively as such; and that at no time was any part of said premises used for any business purposes such as a store, shop, saloon, restaurant, hotel or boarding-house, nor was any intoxicating liquor sold or kept for sale therein.

Your petitioner avers that on the 20th day of February, 1923, in the night-time, William M. Whitney, a Federal prohibition agent, and other United States officers to your petitioner unknown, entered your petitioner's aforesaid dwelling and

over your petitioner's protest and objections, seized therein and removed therefrom a large number of letters, books, papers, memoranda, cards and accounts then and there in your petitioner's lawful custody and possession; and your petitioner is informed and believes that said William M. Whitney and his assistants aforesaid seized said property and took the same into their possession for the purpose of procuring evidence against your petitioner and other persons on a charge of crime; that thereafter they were delivered by the said William [12] M. Whitney to the United States District Attorney, for the Western District of Washington, in whose possession they still are; that they were then submitted to and considered by the Grand Jury of this Court which returned the indictment herein and that the United States District Attorney intends to use the same upon the trial of said indictment, all in violation of your petitioner's rights under the Fifth Amendment to the Constitution of the United States.

Your petitioner further avers that in making said seizure said William M. Whitney and his assistants acted under the pretended authority of a search-warrant issued by A. C. Bowman, United States Commissioner for the Western District of Washington, a copy of which, together with the official return endorsed thereon, is hereto attached and made a part hereof by this record and marked Exhibit "A."

Your petitioner further avers that said search-warrant was issued by said United States Commis-

sioner solely upon the affidavit of one Gordon B. O'Harra, a federal prohibition agent, a copy of which affidavit is hereto attached and made a part hereof by this reference and marked Exhibit "B."

And your petitioner respectfully represents that said search-warrant was wholly irregular and void and was issued and executed in violation of the Fourth and Fifth Amendments to the Constitution of the United States and of Title XI of the Act of Congress of June 15, 1917, commonly known as the Espionage Act, and of the Act of Congress of October 28, 1919, commonly known as the National Prohibition Act, for all of the following reasons:

1. Said warrant was issued and executed for the purpose of procuring from your petitioner's possession evidence upon which to indict and prosecute him for felony, in violation of the Fifth Amendment to the Constitution of the United States. [13]

2. Said search-warrant was issued and employed to search a private dwelling occupied as such by your petitioner, in violation of Section 25 of the National Prohibition Act.

3. Said search-warrant directed the search of your petitioner's premises in the night-time; and said search and seizure were made in the night-time, in violation of the provisions of Section 10 of Title XI of the Espionage Act.

4. That said search-warrant was void because neither the warrant itself, nor the affidavits upon which it was issued, named the owner or occupant of the premises to be searched, nor described with

reasonable particularity, or at all, the property to be seized, or the property which was seized thereunder.

5. Said search-warrant was void because the affidavit upon which the same was issued did not set forth any facts tending to establish the grounds of the application, nor any facts from which said United States Commissioner could determine that said grounds existed.

In further support of his petition, your petitioner avers that at no time did Ed. Hagen occupy, or have any interest in, the premises aforesaid, nor was your petitioner ever an employee of said Ed. Hagen.

WHEREFORE your petitioner prays an order, directing the United States District Attorney to return to him his property aforesaid.

G. F. VANDERVEER,
Attorney for Petitioner. [14]

State of Washington,
County of King,—ss.

G. F. Vanderveer, being first duly sworn, on oath deposes and says: that he is the attorney for the petitioner above named; that he has read the foregoing petition and knows the contents thereof and that the same is true except as to those matters therein alleged on information and belief and as to those matters he believes it to be true.

G. F. VANDERVEER.

Subscribed and sworn to before me this 1" day of May, 1923.

[Seal]

C. A. DYCK,
Notary Public in and for the State of Washington,
Residing at Seattle.

I acknowledge receipt of a copy of above this 1st, day of May, 1923.

DeW. EMORY,
Asst. U. S. Atty. [15]

EXHIBIT "A."

Local Form No. 103.

United States of America,
Western District of Washington,
Northern Division,—ss.

SEARCH-WARRANT.

The President of the United States to the Marshal of the United States for the Western District of Washington, and his deputies, or either of them, and to any National Prohibition Officer or Agent, or the Federal Prohibition Director, of the State of Washington, or any Federal Prohibition Agent of this state, and to the United States Commissioner of Internal Revenue, his assistants, deputies, agents, or inspectors, GREETINGS:

WHEREAS, Gordon B. O'Harra, a Federal Prohibition Agent of the State of Washington, has this day made application for a Search-Warrant and made oath in writing, supported by affidavits, before the undersigned, a Commissioner of the United States for the Western District of Washington,

charging that a crime is being committed against the United States in violation of the National Prohibition Act of Congress by one ED. HAGEN who was, has been and is at said time and place possessing, and selling intoxicating liquor, all for beverage purposes, on certain premises in the City of Seattle, County of King, State of Washington, and in said District, more fully described as

122 Broadway, Seattle, Wash.,

and on the premises used, operated and occupied in connection therewith, all said premises being occupied by ED. HAGEN AND EMPLOYEES

And WHEREAS, the Undersigned is satisfied of the existence of the grounds of the said application, and that there is probable cause to believe their existence,

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, and authorized and empowered in the name of the PRESIDENT OF THE UNITED STATES to enter said premises with such proper assistance as may be necessary, in the day-time, or night-time, and then and there diligently investigate and search the same and into and concerning said crime, and to search the person of said ED. HAGEN AND EMPLOYEES, and from him or her, or from said premises seize any or all of the said property *to* used in or about the commission of said crime, and then and there take the same into your possession, and true report make of your said acts as provided by law.

GIVEN under my hand and seal this 20th day of February, 1923.

[Seal] A. C. BOWMAN,
United States Commissioner, Western District of
Wash., [16]

RETURN OF SEARCH-WARRANT.

Returned this 21 day of Feb. A. D. 1923.

Served, by making search as within directed, upon which search I found 3-1/5 gal. bottles gin; 1/2 pint Pebbleford whiskey; 1/5 gal. bottle Scotch Whiskey; 8 bottles Canadian beer; 14 bottles home brew beer; various letters, books, papers, memoranda, cards, accounts dealing with liquor traffic in immediate possession of various defendants, and duly inventoried the same as above, according to law.

(Signed) GORDON B. O'HARRA.

(Signature.)

I, Gordon B. O'Harra, the officer by whom this warrant was executed do swear that the above inventory contains a true and detailed account of the property taken by me on the warrant.

(Signed) GORDON B. O'HARRA.

(Signature.)

Subscribed and sworn to before me this 23d day of February, 1923.

A. C. BOWMAN,
United States Commissioner.

Western District of Washington,
 United States of America,
 Western District of Washington,—ss.

I certify the foregoing to be a true copy of the original search-warrant (and endorsements) issued by me on the date named therein.

(Signed) A. C. BOWMAN,
 U. S. Commissioner.

Seattle, Wn., Feb. 28, 1923.

EXHIBIT "B."

Local Form 100.

United States of America,
 Western District of Washington,
 Northern Division,—ss.

APPLICATION AND AFFIDAVIT FOR
 SEARCH-WARRANT.

Gordon B. O'Harra being first duly sworn on his oath deposes and says: That he is a Federal Prohibition Agent duly appointed and authorized to act as such within the said district; that a crime against the Government of the United States in violation of the National Prohibition Act of Congress has been and is being committed in this, that in the city of Seattle, county of King, State of Washington, and within the said district and division above named, one

ED HAGEN AND EMPLOYEES

on the 20th day of February, 1923, and thereafter was, has been and is possessing and selling intoxicating liquor, all for beverage purposes, on premises

described as 122 Broadway, Seattle, Wash., and on the premises used, operated and occupied in connection therewith, all being in the county of King, State of Washington, and in said district, and all of said premises being occupied or under the control of Ed Hagen and employees, all in violation of the statute in such cases made and provided and against the peace and dignity of the United States of America.

WHEREFORE, this said affiant hereby asks that a search-warrant be issued directed to the United States Marshal for the said district, and his deputies, and to any National Prohibition Officer or Agent or Deputy in the State of Washington, and to the United States Commissioner of Internal Revenue, his assistants, deputies, agents or inspectors, directing and authorizing a search of the person of the said Ed Hagen and employees, and the premises above described, and seizure of any and all of the above-described property and intoxicating liquor and means of committing the crime aforesaid, all as provided by law and said act.

(Signed) GORDON B. O'HARRA.

Subscribed and sworn to before me this 20th day of February, 1923.

[Seal] (Signed) A. C. BOWMAN,
United States Commissioner.

United States of America,
Western District of Washington,—ss.

I certify the above to be a true copy of the origi-

nal application and affidavit for search-warrant in, said matter.

(Signed) A. C. BOWMAN,
U. S. Commissioner.

March 3, 1923.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 1, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [17]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED J. HAGEN, ED W. PIELOW, CHARLES
GIVENS and CHRIS BROWN,

Defendants.

ORDER DENYING PETITION FOR RETURN
OF PROPERTY.

The petition of the defendant, Ed. W. Pielow, for the return of certain letters, books, papers, memoranda, cards and accounts taken from his possession, having come duly on for hearing before the Honorable Jeremiah Neterer, District Judge, the petitioner appearing by Mr. G. F. Vanderveer, his attorney, the plaintiff appearing by Mr. DeWolfe Emory, Assistant United States Attorney, the Court having considered the arguments of counsel and

being now fully advised in the premises, on motion of the plaintiff,

IT IS ORDERED that said petition be and the same hereby is denied.

To the denial of said petition said Ed W. Pielow duly takes exception and his exception is hereby allowed.

Done in open court this 1st day of May, 1923.

JEREMIAH NETERER,
District Judge.

Copy received this 1st day of May, 1923.

DeW. EMORY,
Asst. U. S. Atty.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 1, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [18]

In the United States District Court for the
Western District of Washington, Northern Di-
vision.

No. 7469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD JOSEPH HAGEN, EDWARD
WHEELER PIELOW, CHARLES AN-
DREW GIVENS and CHRISTOPHER
BROWN,

Defendants.

VERDICT.

We, the jury in the above-entitled cause, find the defendant, Edward Joseph Hagen, is guilty as charged in the indictment herein; and further find the defendant, Edward Wheeler Pielow is guilty as charged in the indictment herein; and further find the defendant, Charles Andrew Givens is guilty as charged in the indictment herein; and further find the defendant Christopher Brown not guilty as charged in the indictment herein.

JOHN DOLAN,
Foreman.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 1, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [19]

In the United States District Court for the Western District of Washington, Northern Division.

No. 7469.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

EDWARD JOSEPH HAGEN,
Defendant.

SENTENCE.

Comes now on this 24th day of March, 1924, the said defendant, Edward Joseph Hagen into open

court for sentence and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says, save as he before hath said. Wherefore, by reason of the law and the premises, it is considered ordered and adjudged by the Court that the defendant is guilty of violation of Section 37 Penal Code of the United States, conspiracy to violate the Act of October 28, 1919, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States, for the term of two years at hard labor. And the said defendant, Edward Joseph Hagen, is now hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree Book, page 82. [20]

United States District Court, Western District of
Washington, Northern Division.

No. 7469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED J. HAGEN, ED W. PIELOW, CHARLES
GIVENS and CHRIS BROWN,

Defendants.

MOTION FOR NEW TRIAL.

Come now the defendants by G. F. Vanderveer, their attorney, and severally move the Court on the files and records herein for an order setting aside the verdict of the jury herein and granting them a new trial on the following grounds:

I.

Irregularity in the proceedings of the Court, jury and plaintiff; orders of the Court; and abuse of discretion; by which the defendants were prevented from having a fair trial.

II.

Insufficiency of the evidence to justify the verdict, and that it is against law.

III.

Error in law occurring at the trial and in the Court's ruling upon the petitions for the suppression of evidence and the motions to quash the indictment herein and duly excepted to at the time by the defendants.

G. F. VANDERVEER,
Attorney for Defendants.

Copy of within motion for new trial received and due service of the same acknowledged this 11 day of Mar. 1924.

THOS. P. REVELLE,
Attorney for Ptff.

M. M.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Mar. 11, 1924. F. M. Harshberger,
Clerk. By S. E. Leitch, Deputy: [21]

United States District Court, for the Western Dis-
trict of Washington, Northern Division.

No. 7469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED J. HAGEN, ED W. PIELOW, CHARLES
GIVENS and CHRIS BROWN,

Defendants.

ORDER DENYING MOTIONS FOR NEW
TRIAL.

The several motions of the defendants for a new trial having come duly on for hearing on the 24th day of March, 1924, the Court having heard the arguments of counsel and being fully advised in the premises,

IT IS ORDERED that said motions be and the same hereby are denied.

Each of the defendants is allowed an exception hereto.

Done in open court this 25th day of March, 1924.

JEREMIAH NETERER,

District Judge.

Received a copy of the within order this 25th day of March, 1924.

THOS. P. REVELLE,
Attorney for Ptff.
M. M.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 25, 1924. F. M. Harshberger, By S. E. Leitch, Deputy. [22]

United States District Court, for the Western District of Washington, Northern Division.

No. 7469.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED J. HAGEN, ED W. PIELOW, CHARLES
GIVENS and CHRIS BROWN,
Defendants.

MOTION FOR RECONSIDERATION OF MOTION FOR NEW TRIAL.

Come now the defendants in the above-entitled action and severally move the Court on the files and records herein and on the attached affidavit of G. F. Vanderveer for a reconsideration of their motion for a new trial herein and for an order vacating the verdict and granting them a new trial on the grounds specified in said motion and on the additional ground of unavoided casualty and miscon-

duct preventing them from having a fair trial, and more particularly because, as more fully specified in the affidavit of said G. F. Vanderveer, there were submitted to the jury that tried said case and there were considered by said jury in arriving at their verdict a large number of envelopes containing inscriptions highly prejudicial to the defendants which were not admitted in evidence nor supported by any testimony in the case.

G. F. VANDERVEER,
Attorney for Defendants. [23]

United States District Court, for the Western District of Washington, Northern Division.

No. 7469.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED J. HAGEN, ED W. PIELOW, CHARLES
GIVENS and CHRIS BROWN,
Defendants.

AFFIDAVIT OF G. F. VANDERVEER.

State of Washington,
County of King,—ss.

G. F. Vanderveer, being first duly sworn, says that he is the attorney for the defendants in the above-entitled cause; that on the trial of said cause a great many cards, sales slips, memoranda and other documents were identified by various witnesses as papers taken from the possession of either

the defendant Ed J. Hagen or Ed W. Pielow or from the room of one Anna Givens; that among other exhibits so identified were the following, to wit:

- Government's Exhibit 6, consisting of a bundle of slips taken from the room of Anna Givens.
- Government's Exhibit 7, consisting of a bundle of slips taken from the room of Anna Givens.
- Government's Exhibit 8, consisting of a bundle of slips taken from the room of Anna Givens.
- Government's Exhibit 10, consisting of a bundle of slips taken from the room of Anna Givens.
- Government's Exhibit 13, consisting of a bundle of slips taken from the room of Anna Givens.
- Government's Exhibit 14, consisting of a bundle of slips taken from the room of Anna Givens. [24]
- Government's Exhibit 11, consisting of papers taken from the person of the defendant Hagen.
- Government's Exhibit 12, consisting of papers taken from the person of the defendant Hagen.
- Government's Exhibit 15, consisting of a memorandum-book and other papers taken from the possession of the defendant Hagen.
- Government's Exhibit 18, consisting of papers taken from the possession of the defendant Hagen.
- Government's Exhibit 20, consisting of other papers which on account of the present

scrambled condition of the exhibits deponent is not able to specifically identify.

Government's Exhibit 21, consisting of cards taken from the possession of defendant Hagen.

That deponent carefully examined all of said papers and documents as they were identified by the several witnesses and none of them were then enclosed in any envelopes or other containers, nor were any envelopes or other containers identified by the witnesses as a part of the exhibits.

Deponent estimates that more than two hundred separate articles, papers and documents of various kinds were thus identified and admitted in evidence, and alleges that at all times between the date of their seizure by Government officials on February 20, 1923, and the trial of said cause all of said exhibits were in the secret custody of Government officials, and on account thereof deponent neither had nor sought an opportunity to examine them or study their contents; that because of their great volume deponent made no attempt to study said exhibits during the progress of the trial nor did he examine or comment on any of them in the course of his argument to the jury, and for all of said reasons deponent had no [25] occasion to, nor did he, ever inspect said exhibits after their identification by the various witnesses until the 27th day of March, 1924, when, in the course of preparing the defendants' proposed bill of exceptions herein, he secured the same from F. M. Harshberger, the Clerk of the above-entitled court, for

the purpose of preparing a descriptive list to supplement the transcript of testimony theretofore furnished him by the court reporter; and upon examination discovered for the first time, to his great surprise, that all of the exhibits hereinabove referred to, except in so far as they had become disarranged, were contained in envelopes bearing in their upper left-hand corner the printed return address:

“Office of United States Attorney, Seattle, Wash.,” and certain other inscriptions in writing as follows:

Upon Government’s Exhibit 6 the inscription:

“Slips showing purchases.”

Upon Government’s Exhibit 7 the inscription:

“Expenses.”

Upon Government’s Exhibit 8 the inscription:

“Withdrawals by Hagen.”

Upon Government’s Exhibit 9 the inscription:

“Slips showing withdrawals by Charley.”

Upon Government’s Exhibit 10 the inscription:

“20th Slip on day of arrest—Sales slip.”

Upon Government’s Exhibit 11 the inscription:

“Rainier Club Sales Slip.”

Upon Government’s Exhibit 12 the inscription:

“Slips showing Expense—See Slip as to charity.”

Upon Government’s Exhibit 13 the inscription:

“Slips showing def. handwriting and Anna’s handwriting.”

Upon Government’s Exhibit 14 the inscription

in red lead pencil: “Payments on the 31st —withdrawals Feb. 10th,” and in [26]

black lead pencil the additional inscription:
“Slip showing withdrawal of money by
Hagen & Pielow—See last page of big led-
ger.”

Upon Government’s Exhibit 15 the inscription:
“138.00 taken from Load. Hagens person.”

Upon Government’s Exhibit 18 the inscription:
“From Hagens person.”

Upon Government’s Exhibit 20 the inscription:
“Deposit slip to credit Con—Exp. Canada—
Hagen had on person. Bill came from Pie-
low’s room ‘Fred Moore’ Bill.”

And upon Government’s Exhibit 21 the inscrip-
tion:

“E11 4583W)
E11 5911) Same No.

Card with Secret No. on it presented by Ed
Hagen—Hagens Person.”

That at the same time deponent found Govern-
ment’s Exhibit No. 17 enclosed in an envelope bear-
ing the return printed address:

“Treasury Department Office of Federal Pro-
hibition Director, Tacoma, Wash.,” which also
bore the following inscription: “U. S. vs. Ed
Hagen from his person to be photographed.”

That deponent immediately inquired of said F. M.
Harshberger whether said envelopes had been sub-
mitted to the jury with their contents and was in-
formed that they had; and deponent alleges on such
information that all of said envelopes were taken
by the jury to their jury-room and considered in
their deliberations upon the verdict. That there-

after deponent exhibited the envelopes containing Government's Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 20 and 21 to Mr. C. T. McKinney, the Assistant United States Attorney who tried said case in behalf of the Government, and inquired if he knew the handwriting thereon, whereupon said Mr. C. T. McKinney informed him that it was [27] his own handwriting; and deponent then exhibited to Mr. Gordon B. O'Harra, a federal prohibition agent, the envelope containing Government's Exhibit 17 with a similar inquiry and was informed by him that in his opinion the writing thereon was in the handwriting of William M. Whitney, Assistant Prohibition Director of the State of Washington.

That immediately thereafter deponent presented said matter to the above-entitled court substantially in the manner recited in this affidavit with the request that all of said documents be compounded, which said Court thereupon ordered done.

Deponent makes this affidavit in support of the defendant's motion for a new trial.

G. F. VANDERVEER.

Subscribed and sworn to before me this 29th day of March, 1924.

[Seal]

C. A. DYCK,
Notary Public in and for the State of Washington,
Residing at Seattle.

Received a copy of the within motion this 29 day of March, 1924.

THOS. P. REVELLE,
M. M.,
Attorney for P'tff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 29, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [28]

United States District Court, for the Western District of Washington, Northern Division.

No. 7469.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED J. HAGEN, ED W. PIELOW, CHARLES
GIVENS and CHRIS BROWN,
Defendants.

ORDER DENYING MOTION FOR RECON-
SIDERATION OF MOTION FOR NEW
TRIAL.

The defendants' motion for a reconsideration of their motion for a new trial and for an order granting their motion for a new trial having come on for hearing, the Court having heard the arguments of counsel, being now fully advised in the premises, and having heretofore filed a written opinion denying said motion,—

IT IS NOW CONSIDERED AND ORDERED that said motion be and the same hereby is denied.

To the foregoing order each of the defendants hereby excepted and his exception is hereby allowed.

Done in open court this 26th day of April, 1924,
as of Apr. 25th, 1924.

JEREMIAH NETERER,
District Judge.

Received a copy of the within order this 26th
day of April, 1924.

THOS. P. REVELLE,
M. M.,
Attorney for Ptf.

[Endorsed]: Filed in the United States District
Court, Western District of Washington, Northern
Division. Apr. 26, 1924. F. M. Harshberger,
Clerk. By S. E. Leitch, Deputy. [29]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7469.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED J. HAGEN, ED W. PIELOW, CHARLES
GIVENS and CHRIS BROWN,
Defendants.

PETITION FOR WRIT OF ERROR OF ED J.
HAGEN.

To the Honorable JEREMIAH NETERER, Judge
of the Above-entitled Court:

The petition of Ed J. Hagen, by his attorney

Fred C. Brown, respectfully shows that on the 24th day of March, 1924, the United States District Court for the Western District of Washington, Northern Division, gave judgment against your petitioner in the above-entitled cause, wherein as appears from the face of the record of the proceedings therein certain errors were committed which are more fully set forth in the assignments of error presented herewith.

Now, therefore, to the end that said matters may be reviewed and said errors corrected by the Circuit Court of Appeals for the Ninth Circuit, your petitioner prays for an allowance of a writ of error and such other orders and processes as may cause all and singular the record and proceedings in said cause to be sent to the Honorable Justices of the Circuit Court of Appeals for the Ninth Circuit for review and correction; and that an order be made staying and suspending all further proceedings herein pending the determination of said writ of error by said Circuit Court of Appeals.

FRED C. BROWN,

Attorney for Ed J. Hagen.

Received a copy of the within petition this 23d day of April, 1924.

THOS. P. REVELLE,

Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 23, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [30]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 7469.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

ED J. HAGEN, ED W. PIELOW, CHARLES
GIVENS and CHRIS BROWN,
Defendants.

ORDER ALLOWING WRIT OF ERROR.

The plaintiff in error having duly presented his petition for writ of error and assignments of error and a writ of error to the Circuit Court of Appeals, having duly issued and the Court having fixed the bond of the plaintiff in error in the sum of four thousand dollars (\$4,000.00), and said bond having been duly filed and approved; now, on motion of the plaintiff in error,

IT IS ORDERED that execution of the judgment herein be stayed pending the determination of said writ of error in the United States Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 25th day of April, 1924.

JEREMIAH NETERER,
District Judge.

Received a copy of the within order this 23d
day of April, 1924.

THOS. P. REVELLE,
Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 25, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [31]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED J. HAGEN, ED W. PIELOW, CHARLES GIVENS and CHRIS BROWN,

Defendants.

ASSIGNMENT OF ERRORS OF ED J. HAGEN.

Now comes the defendant, Ed J. Hagen, by Fred C. Brown, his attorney, and in connection with his petition for a writ of error herein assigns the following errors, which he avers occurred in the trial of said cause, which were duly excepted to by him, and upon which he relies to reverse the judgment entered against him herein:

I.

The District Court erred in denying the defendant's motion to quash the indictment herein on the ground that said indictment was founded upon documents and other articles seized in the residence without authority in law in violation of his rights

under the Fourth Amendment to the Constitution of the United States.

II.

The District Court erred in denying the defendant's petition for the return of documents, liquor and other articles seized by United States Government Prohibition officers in the residence on the night of February 20, 1923, in violation of his rights under the Fourth Amendment to the Constitution of the United States.

III.

The District Court erred in denying the defendant's motion for a directed verdict of not guilty made at the close of the evidence on the ground that there was no evidence to prove a conspiracy between the defendants or to prove any overt act on the part of any defendant as charged in the indictment. [32]

IV.

The District Court erred in denying the defendant's motion for a new trial.

V.

The District Court erred in pronouncing judgment upon the defendant.

VI.

The District Court erred in admitting in evidence Plaintiff's Exhibit No. 2, being a ledger purporting to record their transactions in the sale of intoxicating liquors, and in overruling the defendant's objection thereto on the grounds that the same had been forcibly seized and taken from the residence in the night-time by United States Government pro-

hibition agents without lawful authority and in violation of his rights under the Fourth Amendment to the Constitution of the United States; and that its reception in evidence was a violation of his rights under the Fifth Amendment to the Constitution of the United States, the same being one of the documents for the return of which the defendant had made timely application on the ground of such unlawful seizure.

For the reasons set forth in the sixth assignment of error and which are for convenience incorporated herein by reference.

The District Court also erred as follows:

VII.

In admitting in evidence Government Exhibit No. 3.

VIII.

In admitting in evidence Government Exhibit No. 4.

IX.

In admitting in evidence Government Exhibit No. 5.

X.

In admitting in evidence Government Exhibit No. 6.

XI.

In admitting in evidence Government Exhibit No. 7. [33]

XII.

In admitting in evidence Government Exhibit No. 8.

XIII.

In admitting in evidence Government Exhibit No. 9.

XIV.

In admitting in evidence Government Exhibit No. 10.

XV.

In admitting in evidence Government Exhibit No. 11.

XVI.

In admitting in evidence Government Exhibit No. 12.

XVII.

In admitting in evidence Government Exhibit No. 13.

XVIII.

In admitting in evidence Government Exhibits No. 14 and 15.

XIX.

In admitting in evidence Government Exhibits No. 17, 18, 19 and 20.

XX.

In admitting in evidence Government Exhibits No. 21 and 22.

XXI.

In admitting in evidence Government Exhibit No. 24.

XXII.

In admitting in evidence Government Exhibit No. 25.

XXIII.

In admitting in evidence Government Exhibit No. 26.

XXIV.

In admitting in evidence Government Exhibit No. 27.

XXV.

In admitting in evidence Government Exhibit No. 28.

XXVI.

In admitting in evidence Government Exhibit No. 29.

XXVII.

In admitting in evidence Government Exhibit No. 33. [34]

XXVIII.

In admitting in evidence Government Exhibit No. 35.

XXIX.

In admitting in evidence Government Exhibit No. 42.

XXX.

The District Court erred in permitting the witness, William M. Whitney to testify as follows over the defendant's objection that the same was immaterial and not a subject for expert testimony:

Q. Mr. Witney, in your experience as a Prohibition Director, I will ask you what the abbreviations are for intoxicating liquor for gin?

Mr. VANDERVEER.—I object as immaterial and not a subject for expert testimony.

The COURT.—He may answer.

A. "G."

Mr. VANDERVEER.—It is not proven that these are any established abbreviations.

The COURT.—I understand; he just asked what they are.

Q. What is the abbreviation for Scotch?

A. "S."

Mr. VANDERVEER.—The same objection to run to each of these.

The COURT.—Yes.

Q. What is the abbreviation for Bourbon?

A. "B."

Q. What is the abbreviation for Three Star Hennessy? A. "Three Stars."

Q. What is the abbreviation for Old Parr?

A. "OP."

Q. What is the abbreviation for Haig's Dimple?

A. "HD," sometimes "P."

Q. What is the abbreviation for Hill & Hill?

[35]

A. Well, it is usually "H&H," sometimes "LL."

Mr. VANDERVEER.—Objection shown to each question. It is not a subject for expert testimony, and it is wholly immaterial.

The COURT.—Yes; overruled.

Mr. VANDERVEER.—Exceptions.

Q. What is the abbreviation for Johny Walker's Red Label? A. "JWRL."

XXXI.

The District Court erred in denying the defendant's motion for a reconsideration of their motion for a new trial filed herein on March 29th, 1924.

XXXII.

The District Court erred in denying and not granting the motion for a rehearing filed on April 22d, 1924.

XXXIV.

The District Court erred in signing and filing the order denying the motion for reconsideration of defendants' motion for new trial and motion for rehearing.

WHEREFORE, the said Ed J. Hagen, plaintiff in error, prays that the judgment of said Court be reversed and this cause be remanded to said Circuit Court with instructions to dismiss same and discharge the plaintiff in error from custody and exonerate the sureties on his bail bond, and for such other and further relief as to the Court may seem proper.

FRED C. BROWN,
Attorney for Ed. J. Hagen.

Due service admitted this 25th day of April, 1924.

THOS. P. REVELLE,
District Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 25, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [36]

United States District Court, Western District of
Washington, Northern Division.

No. 7469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED W. PIELOW, CHARLES GIVENS and ED
J. HAGEN,

Defendants.

BILL OF EXCEPTIONS.

BE IT REMEMBERED that heretofore, to wit, on the 28th day of February, 1924, this cause came on for trial before the Honorable Jeremiah Neterer, District Judge, the plaintiff appearing by Thos. P. Revelle and C. T. McKinney, United States Attorney and Assistant United States Attorney, respectively, the defendants appearing by G. F. Vanderveer, their attorney, and thereupon the following proceedings were had:

When said cause was called for trial and before any other proceedings were had therein, the defendants Ed. W. Pielow and Charles Givens presented to the Court orally their several petitions for the return to them of the property seized by federal prohibition agents in their possession and in their residence at No. 122 Broadway, Seattle, Washington, on the 20th day of February, 1923, on the grounds specified in the formal petition therefor filed by the defendant, Ed W. Pielow, and veri-

(Testimony of Gordon B. O'Harra.)

fied by his attorney on the 1st day of May, 1923, and after full consideration thereof said petitions were both denied and both petitioners allowed an exception.

TESTIMONY OF GORDON B. O'HARRA, FOR PLAINTIFF.

Thereupon GORDON B. O'HARRA was called as a witness by the plaintiff and after being duly sworn testified that he was a Federal Prohibition Agent; that on the night of February 20, 1923, about nine o'clock P. M., two or three hours after dark, armed with a search-warrant, of which a copy is attached to the petition of Ed W. Pielow for the return of property filed therein, and accompanied [37] by William M. Whitney and other Federal Prohibition Agents, he entered the premises at No. 122 Broadway, which is an ordinary dwelling-house; that the defendant Pielow came and opened the door when Regan rang the door bell, and let them in; that he proceeded to the room with the search-warrant in his hand and served the search-warrant on defendant Hagen at that time in the center of the dining-room; that they then proceeded to search the premises for liquor acting upon the authority of said warrant; that they found some beer and gin in the kitchen. At this point Mr. Vanderveer objected to any testimony regarding the discovery of liquor under this search-warrant, or any article whatsoever, on the ground the search-

(Testimony of Gordon B. O'Harra.)

warrant was wholly void. The Court let this objection stand to all the liquors found there.

Mr. VANDERVEER.—Or papers.

The COURT.—As to any papers or documents, I would like to have you enter the objection when the question arises. Objection overruled. Exception noted.

Witness, continuing his testimony, further stated that in a dresser drawer in an upstairs room occupied by the defendant Ed W. Pielow he found a printed export price list of the Consolidated Exporters Corporation, Ltd., Vancouver, B. C., which was thereupon marked for identification, "Government Exhibit 19," and on top of the dresser in the same room a pint whisky flask partly filled with whisky which was marked for identification, "Government's Exhibit 25"; also a business card of the Navy Dye Works bearing the notation, "Night Phone E11. 4583-W," which was marked for identification, "Government's Exhibit 42"; and that a similar card bearing the notation, "Ask for Charley," and marked for identification, "Government's Exhibit 43," was taken at the same time from the person of defendant Ed J. Hagen. That in another room on the [38] second floor, occupied by Anna May Givens, he found in a dresser drawer a great many sales slips which were marked for identification, "Government's Exhibits 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 33 and 35"; that in a suitcase in a closet in the same room, and also in the dresser drawer, he found a great many money wrappers, which were

(Testimony of Gordon B. O'Harra.)

marked for identification, "Government's Exhibit 5," and under a cushion on a chair in this same room he found a ledger which was marked for identification, "Government's Exhibit 2," and a day-book which was marked for identification, "Government's Exhibit 3." Witness further testified that the rooms up there were numbered and that defendant Pielow roomed in room No. 2; that defendant Pielow stated that that was his room, that he had rented it and admitted the ownership of the things found in it; that he overheard a conversation in which defendant, Chris Brown, stated he had rented those premises there—it was his place.

Witness further testified that on the ground floor he found three bottles of gin which were marked for identification, "Government's Exhibits 22, 24 and 26, respectively, which were at the time contained in a gunny sack marked for identification, "Government's Exhibit 29"; that in the kitchen and ice-box a number of bottles of Canadian beer and home brewed beer, specimens of which were marked for identification, "Government's Exhibits 27 and 28," respectively. Also, that there were hundreds of whisky bottles in the basement in this place and a large number of grass cartons used to protect the bottles from breaking in transit; that there were several empty bottles upstairs, bottles of different kinds and nearly all of them bearing labels indicating they had been recently used to hold liquor.

On cross-examination the witness testified that Mr. Hagen stated he did not live at No. 122 Broad-

(Testimony of Gordon B. O'Harra.)

way, which statement was true so far as the witness knew; that the defendant Brown and [39] his wife had rooms on the first floor and the defendants Givens and Pielow and the witness Anna Givens had rooms on the second floor, and they were so far as the witness knew, the only occupants of the house, that defendant Givens assumed responsibility for the ownership of all the liquor.

Upon being shown Government's Exhibit 21, witness testified that they were taken off the defendant Hagen by Mr. Regan in the witness' presence.

TESTIMONY OF C. O. MYERS, FOR PLAINTIFF.

Whereupon C. O. MYERS was called as a witness for the plaintiff and testified that according to the records the telephone number on the block was Elliott 4583-W for a number of years, at least as far back as 1916, and that they had a telephone in this place after January 4, 1923; that on that date the telephone number was changed to Elliott 5911; that number Elliott 4583-W was a four-party line, but that he did not know how many were on it; that number Elliott 5911 is an individual line; and that so far as he knew the same party occupied those premises that had it changed, that there was no request made to change the name.

TESTIMONY OF S. C. LINVILLE, FOR PLAINTIFF.

Whereupon S. C. LINVILLE was called as a witness for the plaintiff and testified that he, in

(Testimony of S. C. Linville.)

company with Mr. Sheehan, Mr. Morris and Mr. Whitney, entered the premises through the kitchen door; that he was with Sheehan all the time when he was down in the basement at 122 Broadway; that, afterwards, in the dining or living-room, just off the kitchen, there was some conversation as to the ownership of the various liquors which had been found; that Mr. Givens came out in the kitchen to get a drink; that his mother was in the other room, just in the doorway, and stated she didn't know anything about the gin; and that he distinctly heard Mr. Givens say, "Don't worry about the gin; the gin belongs to me, I put it there."

TESTIMONY OF ANNA MAY GIVENS, FOR
PLAINTIFF.

ANNA MAY GIVENS was called as a witness by the [40] plaintiff, testified that she lived at 122 Broadway on the 20th of February, 1923; that she made the entries in the ledger from the sales slips, that were introduced in evidence which were handed to her by Mr. Pielow; that she was living there with her mother and father and paid no room and board; that the books and ledgers were kept in her room and had been in her room and in her possession; that the entries were made in her handwriting; and that Mr. Pielow had access to them. Upon having her attention directed to Government's Exhibit 33, Miss Givens testified that she made the entries from these slips to the books. Witness identified Exhibit 5, also Government Exhibits 15, 16,

(Testimony of Anna May Givens.)

34 and 37. She further testified that she had a brother by the name of Charlie who was living at 122 Broadway at that time; that he occupied a room in their private home; and that he paid room and board.

TESTIMONY OF WILLIAM M. WHITNEY,
FOR PLAINTIFF.

Whereupon WILLIAM M. WHITNEY was called as a witness for the plaintiff, and after being duly sworn testified that he was Assistant Prohibition Director for the State of Washington, that on the night of February 20, 1923, he had taken part in the search of the premises at No. 122 Broadway, Seattle, Washington. Witness also testified that he saw Mr. Hagen come to the window and toss a bottle out before the witness entered the building.

Q. I wish you would step down here to this map, Mr. Whitney, and show the jury just where you were standing, and under what circumstances that liquor was thrown from the window, and by whom.

A. Well, we stood here, and here is the house where Mr. Sheehan lived. We first went in there and came out the rear way and went to the rear of 122 Broadway. I stepped back rather towards, or almost to the garage, when the others were at the front, anticipating such things might happen. Mr. Hagen came to the window and just gave a toss, and a bottle hurtled through the air, and I yelled to Mr. Sheehan to go and get it; and Mr. [41] Linville and I went right into the house at a door on the south side of the kitchen.

(Testimony of William M. Whitney.)

Well, then, Mr. O'Harra and I went upstairs. First of all I looked over the articles that were taken from the person of Hagen, and the book taken from Pielow; then Mr. O'Harra and I went upstairs also, and we searched Mr. Pielow's room and Miss Givens' room which was room No. 1. Pielow's room was No. 2, also Mr. Charles Given's room, which was room No. 3. Mr. O'Harra and I found the ledger and a small book between the cushions of a wicker chair in Miss Givens' room, No. 1. Mr. O'Harra first found the slips in the top—as I recall, the top dresser drawer; I saw him find them, and take them out, and he and I looked over some of them together. Upon being shown Government's Exhibit 2, marked for identification, witness testified that it was the ledger that was found up there; that his experience as a federal prohibition agent had acquainted him with the various abbreviations and different signs that represented the different brands of intoxicating liquors. Upon being shown Government's Exhibit 14, marked for identification, and asked where he got them, witness testified it was his belief out of Miss Givens' room, in the top drawer. Upon having his attention directed to Government's Exhibits 14 and 11, witness testified that these were a portion of the sales slips that were in Miss Givens' room, that they were pinned together at that time by dates. Upon having his attention directed to Government's Exhibits 35 and 34, and being asked where he got them, witness testified that he got them out of Anna Givens' room.

(Testimony of William M. Whitney.)

Witness further testified that every one of the slips and items in Government's Exhibit 9 were taken from the top drawer of Anna Givens' room; and beneath the slip of February 10th was a bill that was folded up and pinned in the bunch on that date; that on Government's Exhibit 10, the top paper, one under date of February [42] 20th, 1923, was found in the drawer with the rest of them, likewise all other slips were found in the same place.

Upon being shown Government's Exhibit No. 21, marked for identification, witness testified that these were cards that were taken from the person of Ed Hagen by Mr. Regan in his (witness') presence.

Upon being shown Government's Exhibit 42, marked for identification, witness testified that this one came from Pielow's room, and one came from his person (Pielow's).

Witness identified Government's Exhibit 4, marked for identification, and testified that these were slips that were taken from Anna Givens' room, in the top drawer.

Witness identified Government's Exhibit 7, and testified that they were some of the same papers from Anna Givens' room, having been pinned together by dates, and that one had been removed from the dates there which they were bought.

Witness identified Government's Exhibit 8, and testified that they were all taken from the room of Anna Givens; that they had been removed from the dates to which they were attached to the ones of the same date.

(Testimony of William M. Whitney.)

Witness identified Government's Exhibit 33, marked for identification, and testified that these came from the same place.

Witness identified Government's Exhibit 5, marked for identification, and testified that these were in a suitcase; that there were several packages of this kind of slips, some in a bureau drawer and some in a suitcase in a little alcove room of Anna Givens'.

Witness identified Government's Exhibit 18, marked for identification, and testified that these were papers taken from the person of Ed Hagen by Mr. Regan and himself. [43]

Witness identified Government's Exhibit 15, marked for identification, and testified that it was one of the little books taken from the person of Ed Hagen by Mr. Regan in witness' presence.

Witness identified Government's Exhibit 6, marked for identification, and testified that he got them from Mr. Pielow's room.

Witness identified Government's Exhibit 16, marked for identification, and testified that he had seen that before in Miss Givens' room.

Witness identified Government's Exhibit 17, marked for identification, and testified that they were three slips of paper taken out of one of the books from the person of Ed Hagen by Mr. Regan in witness' presence.

Witness identified Government's Exhibit 20, marked for identification, and testified that this deposit slip came from the person of Ed Hagen;

(Testimony of William M. Whitney.)

came out of the book taken from Mr. Hagen by Mr. Regan in witness' presence.

Witness identified Government's Exhibit 44, marked for identification, and testified that it was found by Mr. O'Harra and himself in Mr. Pielow's room, room No. 2.

Witness further testified that he answered the telephone while on the premises. Mr. Vanderveer objected to that as hearsay, entirely improper and immaterial, and the Court sustained the objection.

Witness further testified that during the raid a statement was made by Mr. Pielow, stating that Mr. Pielow lived in room 2, paid board and room rent to Mr. and Mrs. Brown, and that the room was his; and that the bottle of whisky found in his room by Mr. O'Harra in witness' presence, on the dresser was his. Also stated that he had a boat called the "Ruby."

Witness identified Government's Exhibit 30, marked for identification, and testified that it was one of the books taken from the [44] person of Ed Hagen by Mr. Regan in witness' presence.

Witness identified Government's Exhibit 31, marked for identification, and testified that it was another book taken from Ed Hagen by Mr. Regan in witness' presence.

Witness identified Government's Exhibit 19, marked for identification, and testified that it was found in Mr. Pielow's room by Mr. O'Harra in witness' presence.

Witness identified Government's Exhibit 32, marked for identification, and testified that Mr.

(Testimony of William M. Whitney.)

Regan took that book from the person of Ed Pielow in witness' presence; that both of the books marked as Exhibit 32, came off the person of Ed Pielow.

Witness identified Government's Exhibits 22, 26 and 24, and testified that they were the three bottles of gin that were in the sack he put the labels on.

Witness further testified that he, with Mr. O'Harra, searched the garage; that there was a pit dug and boarded up under one garage, and had a false bottom, and in the bottom part were some sacks with quite a number of grass cartons that come around whisky bottles.

**TESTIMONY OF MRS. H. M. O'NEILL, FOR
PLAINTIFF.**

Whereupon Mrs. H. M. O'NEILL was called as a witness for the plaintiff, and being duly sworn, testified that she was a notary public in the city of Seattle on the 20th day of March, 1923; that she was employed at that time by C. L. Morris; that she acted as notary public and that she took Mr. Hagen's acknowledgment that he signed Government's Exhibit 45, but that she did not know whether he signed it in her presence or not.

Q. (By the COURT.) Did any of the parties acknowledge to you that that was their signature, in your presence?

A. Certainly, I took their acknowledgment.

Witness further testified that she took the acknowledgment of Charley Givens that he signed

(Testimony of Mrs. H. M. O'Neill.)

Government's Exhibit 37, and that he must have been present at the time. [45]

Q. As to Government's Exhibit 39, for identification, I will ask you if you took the acknowledgment for that bond?

A. I guess I did. I don't see my signature anywhere on it.

TESTIMONY OF A. C. BOWMAN, FOR PLAINTIFF.

Whereupon A. C. BOWMAN was called as a witness for the plaintiff, and being duly sworn, testified as follows: that he was United States Commissioner for this district; that he was acting as such on March 9th, 1923; that Ed Hagen acknowledged his signature on Government's Exhibit 46 on the 21st day of February, 1923, instead of on the 9th of March; that Mr. Hagen was present at the time; and that he could identify the defendant as the man that acknowledged signing the said Exhibit 46. That Mr. Pielow also on the 21st day of February, 1923, acknowledged Government's Exhibit 47 before him, and that he recognized the defendant Pielow as being the man that acknowledged that.

Q. Showing you Government's Exhibit 48, marked for identification, I will ask you if Mr. Givens acknowledged that before you on whatever date is on there?

Mr. VANDERVEER.—I object as immaterial.

The COURT.—Overruled.

(Testimony of A. C. Bowman.)

Mr. VANDERVEER.—Exception.

A. Mr. Givens acknowledged this before me. Charles Givens.

Mr. VANDERVEER.—I thought you said Miss Givens.

Witness testified that he did not believe he would recognize Mr. Givens as the man before him that acknowledged that.

Witness testified that Mr. Brown acknowledged Government's Exhibit 49 before him on the 21st day of February, 1923.

Mr. McKINNEY.—I offer the bonds in evidence at this time, your Honor.

Mr. VANDERVEER.—Make the same objection as to each one, and it was executed in exercise of a constitutional right, and no advantage can be taken of it. [46]

The COURT.—Overruled. Admitted.

Mr. VANDERVEER.—Exception.

At this point the plaintiff offered in evidence Government's Exhibits 23, 25, 27, 28, 22, 24 and 26.

Mr. VANDERVEER.—I make the same objection which I have heretofore urged, that these articles were seized from the defendants unlawfully, and without any warrant in law, and are the same articles which we have heretofore petitioned for the return and suppression.

The COURT.—Overruled.

Mr. VANDERVEER.—Exception.

The COURT.—Note an exception.

(Exhibits 23, 25, 27, 28, 22, 24 and 26, admitted in evidence.)

Mr. McKINNEY.—Also offer in evidence Government's Exhibits 2 and 3, being ledgers which were seized in Miss Givens' room on the night of the raid.

Mr. VANDERVEER.—Same objection. With, of course, the further objection that these books were not taken from the possession of anybody against whom a search-warrant had been issued, nor are they described in any way on earth in either the affidavit or warrant. The warrant is absolutely void.

The COURT.—Objection overruled.

Mr. VANDERVEER.—Exception.

(Admitted.)

Government's Exhibits 29, 30, 31, 14, 10, 9 and 11, admitted as evidence. Usual objection raised by Mr. Vanderveer, overruled by the Court and exception taken by Mr. Vanderveer.

Mr. McKINNEY.—Also Government's Exhibit 16, a mortgage with Anna Givens' signature on it.

Mr. VANDERVEER.—Further objection that it is immaterial and irrelevant.

Mr. McKINNEY.—For the purpose of showing her handwriting in comparison with the sales slips.

[47]

The COURT.—The signature may be admitted for the purpose of signature.

Mr. VANDERVEER.—It is not at all necessary for that purpose, we have books full of her admitted handwriting; it is prejudicial and it is not at all necessary or germane on anything in this case.

The book full of handwriting she had admitted, and your Honor had already admitted in evidence.

The COURT.—I think that is right. That will be denied.

Government's Exhibits 16, 21, 35 and 8, admitted as evidence. Usual objection raised by Mr. Vanderveer, overruled by the Court and exception taken by Mr. Vanderveer.

The COURT.—Enumerate them all and let one objection cover them all.

Mr. McKINNEY.—18, 17 and 5 being—

Mr. VANDERVEER.—Further objection it is immaterial as to 5.

The COURT.—That will be overruled.

Mr. VANDERVEER.—Exception. That has no materiality in this case at all.

(Admitted.)

Government's Exhibits 42 and 43 admitted as evidence.

Mr. McKINNEY.—Government's Exhibits 7 and 19.

Mr. VANDERVEER.—Upon what pretext is 19 offered? Not material at all.

Mr. McKINNEY.—You look at it, your Honor, different items; also price lists on intoxicating liquor in Canada. The first document I offer for the purpose of showing Pielow's handwriting; his signature is upon that note; and also this document here.—

Mr. VANDERVEER.—Of course, the objection goes to this also. They were illegally seized; it is a

little bit difficult to say that any of those—at least an insurance policy—is an instrument of crime.

Mr. McKINNEY.—No, we don't care about the insurance policy. [48]

The COURT.—Objection to the policy will be sustained. The note may go in for the purpose of showing signature, and this other memorandum, there—

Mr. VANDERVEER.—The signature on the note is not proven; not a word about it.

The COURT.—That is right. The objection will be sustained.

Mr. McKINNEY.—Exhibit No. 20, marked for identification, being a deposit slip taken from the person of Hagen.

Mr. VANDERVEER.—Object to that as immaterial; also seized illegally; cannot be pretended to be an instrument for the commission of any crime; private document.

The COURT.—Overruled.

Mr. VANDERVEER.—Exception.

(Admitted.)

Mr. McKINNEY.—I make an offer of all these exhibits to include exhibits 1 to 49.

The COURT.—I guess you have enumerated all?

Mr. McKINNEY.—No, I haven't.

The CLERK.—16 is not offered.

The COURT.—That may be returned. I understand the general objection is made to all these, and overruled, and exception noted.

TESTIMONY OF J. P. WILSON, FOR PLAINTIFF.

J. P. WILSON, called as a witness for the plaintiff, being duly sworn, testified that he is the president of the Wilson Modern Business College; that he had had occasion to compare and form judgments as to the similarity of handwritings for about forty years; upon being shown Government's Exhibit 46 and asked to compare it with the handwriting on Government's Exhibit 40, and also being shown Government's Exhibit 45 and the signature thereon and also a part of Government's Exhibit 13, and asked if he would say that the same man wrote the two signatures, that they were in the same handwriting, witness testified that [49] he should think the name "Hagen" on the slip and the name "Hagen" on the two papers were written by the same person.

TESTIMONY OF J. S. SWENSON, FOR PLAINTIFF.

J. S. SWENSON, being called as a witness for the plaintiff, was duly sworn and testified that he was a Postoffice Inspector for the United States Government and that in that capacity he had occasion to examine handwritings to a considerable extent; that he had been engaged in that kind of work about twenty years. Upon being shown Government's Exhibit 45 and Government's Exhibit 13 and asked to compare the two signatures witness testified

(Testimony of J. S. Swenson.)

that he believed that the first signature, "Ed Hagen" as in the one document and the "Hagen" written in the other and all the handwriting on the slip were written by the same person. Upon being shown Government's Exhibit 10 and Government's Exhibit 45 and asked to compare the two signatures and give his opinion as to whether the two signatures were the same, witness testified that he thought they were written by the same person.

TESTIMONY OF WILLIAM M. WHITNEY,
FOR PLAINTIFF (RECALLED).

Recalled as a witness for the plaintiff, Mr. WHITNEY testified as follows:

Q. Mr. Whitney, in your experience as a Prohibition Director I will ask you what the abbreviations are for intoxicating liquor for gin?

Mr. VANDERVEER.—I object as immaterial; not a subject for expert testimony.

The COURT.—He may answer.

A. "G."

Mr. VANDERVEER.—It is not proven that these are any established abbreviations.

The COURT.—I understand; he just asked him what they are.

Q. What is the abbreviation for Scotch?

A. "S."

Mr. VANDERVEER.—Same objection to run to each of these. [50]

The COURT.—Yes.

Q. What is the abbreviation for Bourbon?

(Testimony of William M. Whitney.)

A. "B."

Q. What is the abbreviation for Three Star Hennessy? A. "Three Stars."

Q. What is the abbreviation for Old Parr?

A. "O. P."

Q. What is the abbreviation for Haig's Dimple?

A. "H. D." sometimes "P."

Q. What is the abbreviation for Hill & Hill?

A. Well, it is usually "H. & H." sometimes "LL."

Mr. VANDERVEER.—Objection shown to each question. It is not subject for expert testimony, and it is wholly immaterial.

The COURT.—Yes, overruled.

Mr. VANDERVEER.—Exception.

Q. What is the abbreviation for Johnny Walker's Red Label? A. "J. W. R. L."

When cross-examined by Mr. Vanderveer, the witness testified that the abbreviations referred to had just grown up in the trade; that they were used by those engaged in the liquor traffic; that all used nearly the same ones; and that he did not know what ones the witness Anna Givens used.

TESTIMONY OF ANNA GIVENS, FOR PLAINTIFF.

Thereupon ANNA GIVENS was called as a witness by the plaintiff and after being duly sworn testified that all of the slips identified as Government Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 33, and

(Testimony of Anna Givens.)

35 were given to her by the defendant Ed W. Pielow; that she did not know in whose handwriting they were nor understand the abbreviations appearing thereon, but entered the same in the day-book and ledger identified as Government Exhibits 3 and 2 respectively and that all of said books and slips belonged to the defendant Pielow and were in her room at the time of their seizure [51] only for her own convenience in posting the same.

When the jury retired to deliberate on its verdict all of the exhibits were sent to the jury-room and by inadvertence Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, and 21 were each enclosed in an envelope which also went to the jury-room bearing in its upper left-hand corner the printed return address: "Office of United States Attorney, Seattle, Wash." and certain other inscriptions in writing as follows:

Upon Government's Exhibit 6, the inscription: "Slips showing purchases."

Upon Government's Exhibit 7, the inscription: "Expenses."

Upon Government's Exhibit 8, the inscription: "Withdrawals by Hagen."

Upon Government's Exhibit 9, the inscription: "Slips showing withdrawals by Charley."

Upon Government's Exhibit 10, the inscription: "20th slip on day of arrest—Sales slip."

Upon Government's Exhibit 11, the inscription: "Rainier Club Sales Slip."

Upon Government's Exhibit 12, the inscription: "Slips showing expense—see slip as to charity."

Upon Government's Exhibit 13, the inscription: "Slips showing def. handwriting and Anna's handwriting."

Upon Government's Exhibit 14, the inscription in red lead pencil: "Payments on the 31st—withdrawals Feb. 10th," and in black lead pencil the additional inscriptions: "Slips showing withdrawal of money by Hagen & Pielow—see last page of big ledger."

Upon Government's Exhibit 15, the inscription: "138.00 taken for load Hagens person."

Upon Government's Exhibit 18, the inscription: "Deposit slip to credit Con—Exp. Canada—Hagen had on person. Bill came from Pielow's room 'Fred Moore' Bill." [52]

Upon Government's Exhibit 21, the inscription:

"E11 4583 W)
E11 5911) Same No."

Card with Secret No. on it presented by Ed Hagen—Hagen's person.

And Government's Exhibit 17 was sent to the jury-room enclosed in an envelope which also went to the jury-room bearing in its upper left-hand corner the printed return address: "Treasury Department, Office of Federal Prohibition Director, Tacoma, Wash." which also bore the following inscription: "U. S. vs. Ed Hagen from his person to be photographed."

After the defendant's motion for a new trial had been denied, judgment entered, and writs of error herein had been issued as to the defendants Ed W.

Pielow and Charles Givens, the defendants severally moved the Court for a reconsideration of the motion for a new trial and for an order vacating the verdict and granting a new trial on the ground of unavoidable casualty and misconduct preventing them from having a fair trial, and filed in support of said motion the following affidavit of their attorney which was uncontradicted:

“G. F. Vanderveer, being first duly sworn, says that he is the attorney for the defendants in the above-entitled cause; that on the trial of said cause a great many cards, sales slips, memoranda and other documents were identified by various witnesses as papers taken from the possession of either the defendant Ed J. Hagen or Ed W. Pielow or from the room of one Anna Givens; that among other exhibits so identified were the following, to wit;

Government’s Exhibit 6, consisting of a bundle of slips from the room of Anna Givens.

Government’s Exhibit 7, consisting of a bundle of slips taken from the room of Anna Givens.

Government’s Exhibit 8, consisting of a bundle of slips taken from the room of Anna Givens.

Government’s Exhibit 10, consisting of a bundle of slips taken from the room of Anna Givens.

Government’s Exhibit 13, consisting of a bundle of slips taken from the room of Anna Givens. [53]

Government’s Exhibit 14, consisting of a bundle of slips taken from the room of Anna Givens.

Government’s Exhibit 11, consisting of papers taken from the person of the defendant Hagen.

Government's Exhibit 12, consisting of papers taken from the person of the defendant Hagen.

Government's Exhibit 15, consisting of a memorandum book and other papers taken from the possession of the defendant Hagen.

Government's Exhibit 18, consisting of papers taken from the possession of the defendant Hagen.

Government's Exhibit 20, consisting of other papers which on account of the present scrambled condition of the exhibits deponent is not now able to specifically identify.

Government's Exhibit 21, consisting of cards taken from the possession of the defendant Hagen.

That deponent carefully examined all of said papers and documents as they were identified by the several witnesses and none of them were then enclosed in any envelopes or other containers, nor were any envelopes or other containers identified by the witnesses as a part of the exhibits.

Deponent estimates that more than two hundred separate articles, papers and documents of various kinds were thus identified and admitted in evidence, and alleges at all times between the date of their seizure by Government officials on February 20, 1923, and the trial of said cause all of said exhibits were in the secret custody of Government officials, and on account thereof deponent neither had nor sought an opportunity to examine them or study their contents; that because of their great volume deponent made no attempt to study said exhibits during the progress of the trial nor did he examine or comment on any of them in the course of his

argument to the jury, and for all of said reasons deponent had no occasion to, nor did he, ever inspect said exhibits after their identification by the various witnesses until the 27th day of March, 1924, when in the course of preparing the defendant's proposed bill of exceptions herein he secured the same from F. M. Harshberger, the Clerk of the above-entitled Court, for the purpose of preparing a descriptive list to supplement the transcript of testimony theretofore furnished him by the court reporter; and upon examination, discovered for the first time, to his great surprise, that all of the exhibits hereinabove referred to, except in so far as they had become disarranged, were contained in envelopes bearing in their upper left-hand corner the printed return address: "Office of United States Attorney, Seattle, Wash." and certain other inscriptions in writing as follows:

Upon Government's Exhibit 6, the inscription: "Slips showing purchases."

Upon Government's Exhibit 7, the inscription: "Expenses."

Upon Government's Exhibit 8, the inscription: "Withdrawals by Hagen." [54]

Upon Government's Exhibit 9, the inscription: "Slips showing withdrawals by Charley."

Upon Government's Exhibit 10, the inscription: "20th slip on day of arrest—Sales slip."

Upon Government's Exhibit 11, the inscription: "Rainier Club sales slip."

Upon Government's Exhibit 12, the inscription: "Slips showing Expense—see slip as to charity."

Upon Government's Exhibit 13, the inscription: "Slips showing def. handwriting and Anna's handwriting."

Upon Government's Exhibit 14, the inscription in red lead pencil: "Payments on the 31st—withdrawals Feb. 10th," and in black lead pencil the additional inscription: "Slips showing withdrawal of money by Hagen & Pielow—See last page of big ledger."

Upon Government's Exhibit 15, the inscription: "138.00 taken for Load. Hagens person."

Upon Government's Exhibit 18, the inscription: "Deposit slip to credit it Con—Exp. Canada—Hagen had on person. Bill came from Pielow's room 'Fred Moor' Bill."

And upon Government's Exhibit 21, the inscription:

"E11 4583 W) Same No.
E11 5911)

Cards with secret No. on it presented by Ed Hagen—Hagen's person."

And Government's Exhibit 17 was sent to the jury-room enclosed in an envelope which also went to the jury-room bearing in its upper left-hand corner the printed return address: "Treasury Department, Office of Federal Prohibition Director, Tacoma, Wash." which also bore the following inscription: U. S. vs. Ed Hagen, from his person to be photographed."

That deponent immediately inquired of said F. M. Harshberger whether said envelopes had been submitted to the jury with their contents and was in-

formed that they had; and deponent alleges on such information that all of said envelopes were taken by the jury to their jury-room and considered in their deliberations upon the verdict. That thereafter deponent exhibited the envelopes containing Government's Exhibits 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 20, and 21 to Mr. C. T. McKinney, the Assistant United States Attorney who tried said case in behalf of the Government and inquired if he knew the handwriting thereon, whereupon said Mr. C. T. McKinney informed him that it was his own handwriting; and deponent then exhibited to Mr. Gordon B. O'Harra, a Federal Prohibition Agent, the envelope containing Government's Exhibit 17 with a similar inquiry and was informed by him that in his opinion the writing thereon was in the handwriting of William M. Whitney, Assistant Prohibition Director of the State of Washington.

That immediately thereafter, deponent presented said matter to the above-entitled Court substantially in the manner recited in this affidavit with the request that all of said documents be [55] compounded, which said Court thereupon ordered done.

Deponent makes this affidavit in support of the defendants' motion for a new trial."

Plaintiff in error prays that this his bill of exceptions may be allowed, settled and signed.

Inserted by the Court: The several slips and memoranda had been enclosed in the envelopes with the writing thereon. These envelopes, with the slips enclosed, were presented to the witnesses for identification and the envelopes containing the slips

were marked by the Clerk. During the trial these exhibits were kept in the several envelopes and were used as occasion required while so enclosed, and in this manner were sent to the jury-room. The contents of the envelopes as impounded, are not all as when sent to the jury.

FRED C. BROWN,

Counsel for Plaintiff in Error, Ed J. Hagen.

Settled and allowed this 8th day of September, 1924.

JEREMIAH NETERER,

District Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 8, 1924. F. M. Harshberger, Clerk.
[56]

In the District Court of the United States, Western District of Washington, Northern Division.

No. 7469.

ED J. HAGEN,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

REQUISITION FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please prepare to be included in the

transcript of record of the above-entitled cause the following:

1. Indictment.
2. Motion to quash indictment.
3. Order denying same and noting exceptions.
4. Petition of Ed W. Pielow for return of property.
5. Order denying same and noting exception.
6. Verdict.
7. Judgment.
8. Motion for new trial.
9. Order denying same and noting exception.
10. Motion for reconsideration of motion for new trial.
11. Order denying same and noting exception.
12. Petition of Ed J. Hagen for writ of error.
13. Order allowing writ of error.
14. Writ of error of Ed J. Hagen.
15. Citation on writ of error of Ed J. Hagen.
16. Assignments of error of Ed J. Hagen.
17. Bill of exceptions.
18. This praecipe.

FRED C. BROWN,

Attorney for Plaintiff in Error, Ed J. Hagen.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 18, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [57]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 7469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED J. HAGEN,

Defendant.

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 57 inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees

and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [58]

Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate or return 152 folios at 15¢	\$22.80
Certificate of Clerk to transcript of record, 4 folios at 15¢	60
Seal to said Certificate	20
<hr/>	
Total	\$23.60

I hereby certify that the above cost for preparing and certifying record, amounting to \$23.60, has been paid to me by attorney for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error and the original citation issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 16th day of September, 1924.

[Seal] F. M. HARSHBERGER,
Clerk United States District Court, Western District of Washington. [59]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED J. HAGEN, ED W. PIELOW, CHARLES
GIVENS and CHRIS BROWN,

Defendants.

WRIT OF ERROR (ED J. HAGEN).

The President of the United States to the Honor-
able JEREMIAH NETERER, Judge of the
District Court of the Western District of
Washington, Northern Division, and to the
said Court, GREETINGS:

Because in the record and proceedings as also in
the rendition of the judgment and sentence in the
District Court of the United States for the West-
ern District of Washington, Northern Division, in
a cause pending therein wherein the United States
of America was plaintiff and Ed J. Hagen, defend-
ant, it is charged a manifest error happened and
occurred to the damage of the said Ed J. Hagen,
the above-named plaintiff in error as by his peti-
tion and complaint doth appear, and we being will-
ing that error, if any there hath been, should be
corrected and full and speedy justice be done to the
parties aforesaid in this behalf, do command you
that under your seal you send the record and pro-

ceedings aforesaid with all things concerning the same and pertaining thereto to the United States Circuit Court of Appeals for the Ninth Circuit together with this writ so that you may have same at San Francisco where said Court is sitting within thirty (30) days from the date hereof in the said Circuit Court of Appeals to be then and there held and the records and proceedings aforesaid being inspected the said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right and according to the law and custom of the United States should be done. [60]

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 25th day of April, 1924.

[Seal] F. M. HARSHBERGER,
Clerk of the United States District Court of the
Western District of Washington.

Allowed this 25th day of April, 1924.

JEREMIAH NETERER,
District Judge.

Received a copy of the foregoing writ of error this 25th day of April, 1924.

J. W. HOAR,
Spec. Asst. United States Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, Apr. 25, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [61]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7469.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED J. HAGEN, ED W. PIELOW, CHARLES
GIVENS and CHRIS BROWN,

Defendants.

CITATION ON WRIT OF ERROR (ED J.
HAGEN).

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear in a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, State of California, within (30) thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office in the District Court of the United States for the Western District of Washington, Northern Division, wherein Ed J. Hagen is plaintiff in error and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against Ed J. Hagen as in said writ of error mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable JEREMIAH NETERER,
Judge of the District Court of the United States

for the Western District of Washington, this 25 day of April, 1924.

[Seal]

JEREMIAH NETERER,

District Judge.

Due service of a copy of the foregoing Citation admitted this 25 day of April, 1924.

J. W. HOAR,

Spec. Asst. U. S. District Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 25, 1924. F. M. Harshberger, Clerk. S. E. Leitch, Deputy. [62]

[Endorsed]: No. 4351. United States Circuit Court of Appeals for the Ninth Circuit. Edward Joseph Hagen, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed Sept. 29, 1924.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.